

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY EIGHTH DAY OF SEPTEMBER
TWO THOUSAND AND SIX

PRESENT

**THE HON'BLE MR JUSTICE J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE D.APPA RAO**

WRIT PETITION No.19805 OF 2006

Between:

M/s. Phani Greeshma Agencies

..... PETITIONER

AND

Commercial Tax Officer,
Benz Circle, Vijayawada and others

....RESPONDENTS

THE HON'BLE MR JUSTICE
J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE
D.APPA RAO

WRIT PETITION No.19805 OF 2006

O R D E R

(Per Sri Justice J.Chelameswar)

This writ petition is filed with a prayer as follows:

“... Hon’ble Court may be pleased to issue an appropriate Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the common order dated 23.3.2006 passed by the 3rd respondent dismissing the revision petitions seeking stay of disputed penalties in an amount of Rs.33,978/-, Rs.19,71,030/- and Rs.4,46,817/- for the years 2001-02, 2002-03 and 2003-04, respectively, as being illegal, unreasonable and unsustainable in law and pass ...”

The petitioner is a proprietary concern and a small-scale industry, carrying on the business in the manufacture of medical oxygen etc. The Government of Andhra Pradesh issued G.O.Ms.No.108, Industries and Commerce Department, announcing certain incentives in favour of the small-scale industries. The petitioner is of the opinion that the industry set up by him is eligible for the concessions announced under the said G.O. It appears, under the procedure prescribed under the said G.O., any person claiming the incentives including the tax incentives is required to obtain a certificate for the purpose of availing of incentives to small-scale units under “Target 2000” scheme.

However, the Commissioner of industries declined grant of such a certificate for reasons with which we are not concerned at present.

In view of the belief that the petitioner is entitled for certain exemptions on sales tax, it appears that the petitioner did not file returns for the assessment years 2001-02 to 2003-04. The 1st respondent issued a show cause notice calling upon the petitioner to explain why penalty proceedings should not be initiated against him, for non-filing of the returns which amounts to concealment of the turnover, liable to be taxed under the APGST Act. After receiving the reply of the petitioner, final orders imposing levy of penalty for the above mentioned three assessment years were passed. Aggrieved by the same, the petitioner carried three separate appeals before the 2nd respondent. Along with the appeals, the petitioner filed applications seeking stay of recovery of the penalty during the pendency of the appeal. The said applications were rejected by the 2nd respondent by a common order dated 23.3.2006. Hence, the present writ petition.

Heard the learned counsel for the petitioner and the learned Government Pleader.

We are informed that the decision of the Commissioner of Industries declining to grant the eligibility certificate is challenged by the petitioner in another W.P.No.24756 of 2002 and the same is pending on the file of this court.

In the background of the above mentioned facts, we are of the opinion that the writ petition can be disposed of at the stage of admission itself by directing the respondents not to take any coercive steps for recovery of the penalty referred to earlier, during the pendency of the appeals before the 2nd respondent on condition that the petitioner deposits 1/4th of the penalty amount with reference to each of the above mentioned assessment years, within a period of 4 weeks from the date of receipt of a copy of this order.

JUSTICE J.CHELAMESWAR

JUSTICE D.APPA RAO

28TH SEPTEMBER, 2006

Note: Operative portion by wire

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THE HON'BLE MR JUSTICE
J.CHELAMESWAR
AND
THE HON'BLE MR JUSTICE
D.APPA RAO

WRIT PETITION No.19800 OF 2006
(Per Sri Justice J.Chelameswar)

27TH SEPTEMBER, 2006